

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7252 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

KANTILAL JAYANTILAL VORA

Versus

COMPETENT AUTHORITY AND DY. COLLECTOR (ULC), RAJKOT
& ANR.

Appearance:

Shri J.R. Nanavaty, Advocate, for the Petitioner

Shri T.H. Sompura, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 15/03/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No. 1 herein) on 11th June 1986 under sec. 21(2) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No. 2 herein) on 15th March 1988 in Appeal

No. Rajkot-112 of 1986 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 1 cancelled the permission granted by the order passed by him on 11th April 1980 under sec. 21(1) of the Act with respect to Plots Nos. 2, 10, 15, and 17 from Survey No. 397 in all admeasuring 2903.18 square meters (the disputed lands for convenience).

2. The facts giving rise to this petition move in a narrow compass. The petitioner applied for permission under sec. 21(1) of the Act. By his order passed on 11th April 1980, respondent No. 1 granted such permission on certain terms and conditions. One condition was regarding commencement of the construction within one year from its date under intimation to respondent No. 1. Another condition required the petitioner to complete the construction work in all respects within 5 years from the date of the order. It appears that the petitioner did not start construction work within the stipulated time-limit of one year. Thereupon a show-cause notice came to be issued under sec. 21(2) of the Act on 24th September 1981 calling upon the petitioner to show cause why the permission granted under sec. 21(1) of the Act by the order passed on 11th April 1980 should not be cancelled. After hearing the parties, by his order passed on 13th September 1982 under sec. 21(2) of the Act, respondent No. 1 cancelled the permission under sec. 21(1) thereof granted by the order passed on 11th April 1980. The aggrieved petitioner carried the matter in appeal before respondent No. 2 under sec. 33 of the Act. That appeal came to be accepted by the order passed by respondent No. 2 on 17th February 1984 presumably on assurance that the petitioner would be able to complete the scheme within the stipulated time-limit of 5 years. It appears that the petitioner did not complete the scheme within the stipulated time-limit of 5 years. Thereupon a fresh show-cause notice came to be issued on 22nd April 1985 calling upon the petitioner to show cause why the permission granted under sec. 21(1) of the Act by the order passed on 11th April 1980 should not be cancelled. Thereafter, by his order passed on 11th June 1986 under sec. 21(2) of the Act, respondent No. 1 cancelled the permission granted under sec. 21(1) of the Act by the order passed on 11th April 1980. Its copy is at Annexure A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No. 2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-112 of 1986. It was heard along with three allied appeals. By the common order passed on 15th March 1988

in the aforesaid four appeals, respondent No. 2 dismissed inter alia the petitioner's appeal. Its copy is at Annexure B to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition.

3. Delay in completion of the scheme can be condoned by imposing suitable penalty on the land-holder in view of the ruling of this Court in the case of Givndlal Chunilal Dalvadi v. The State of Gujarat and others reported in 1994(1) Gujarat Current Decisions 526 and in the case of Suvarnaben, wd/o Thakorlal Gordhandas and another v. The Competent Authority and Additional Collector (ULC) and another reported in AIR 1996 Gujarat 13 if such delay is not found on absolutely unjustifiable grounds. In the instant case a show-cause notice under sec. 21(2) of the Act was issued on 24th September 1981 and ultimately that notice came to be quashed by the order passed in appeal on 17th February 1984. It is obvious that the petitioner could not have made construction during the intervening period of nearly 2 1/2 years from the date of the show-cause notice and the order passed in appeal for its quashing. It thus becomes clear that the delay on the part of the petitioner in not completing the scheme within the stipulated time-limit of 5 years was not on account of unjustifiable grounds. In that view of the matter, the aforesaid rulings of this Court will apply in this case.

4. Under the order passed by respondent No. 1 on 11th April 1990, the petitioner was required to construct 8 dwelling units of not exceeding 40 square meters in the plinth area and 2 dwelling units of not exceeding 80 square meters in the plinth area. It would therefore be desirable to impose the penalty at the rate of Rs. 2500 per dwelling unit for the plinth area not exceeding 40 square meters and Rs. 3500 per dwelling unit of the plinth area not exceeding 80 square meters. The petitioner is thus required to pay the penalty of in all Rs. 27,000/-. He deserves to be directed to pay Rs. 27,000/- to the treasury and present the challan before respondent No. 1 within one month from today. The petitioner also deserves to be directed to complete the construction work in accordance with the scheme in all respects within 2 1/2 years from today.

5. In the result, this petition is accepted. The order passed by the Competent Authority at Rajkot

(respondent No.1 herein) on 11th June 1986 under sec. 21(2) of the Act at Annexure A to this petition as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at Ahmedabad on 15th March 1988 inter alia in Appeal No. Rajkot-112 of 1986 at Annexure B to this petition is quashed and set aside on condition of payment of the penalty amount in the sum of Rs. 27,000/in the Treasury at Rajkot and to produce the challan denoting such payment before respondent No. 1 within one month from today. The petitioner is also directed to complete the construction work in all respects within 2 1/2 years from today. Rule is accordingly made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.
